



BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel

October 9, 2001

615 214 6301
Fax 615 214 7406

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

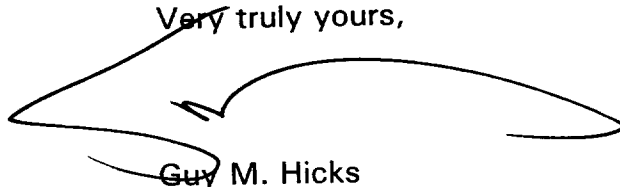
Re: *Petition of Sprint Communications Company L.P. for Arbitration with
BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the
Telecommunications Act of 1996*
Docket No. 00-00691

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Post-Hearing Brief of BellSouth Telecommunications, Inc. The Brief addresses Issues 4 and 6. As stated in the Revised Joint Issues Matrix submitted by the parties on September 12, 2001, BellSouth acknowledges that the Authority, in previous arbitration rulings, has determined that BellSouth should combine elements for CLECs that BellSouth "ordinarily combines" in its network, including Enhanced Extended Links ("EELs"). BellSouth further acknowledges that the Authority has indicated in prior arbitration rulings that it intends to apply that ruling in subsequent arbitrations. In order to preserve its appellate rights, however, BellSouth sets forth its position on these issues in its Post-Hearing Brief.

A copy of this letter and the Post-Hearing Brief are being provided to counsel for Sprint Communications Company, LP.

Very truly yours,



Guy M. Hicks

GMH:ch
Enclosure

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition of Sprint Communications Company L.P. for Arbitration with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*

Docket No. 00-00691

POST-HEARING BRIEF OF BELL SOUTH TELECOMMUNICATIONS, INC.

BellSouth Telecommunications, Inc. ("BellSouth") submits this Post-Hearing Brief to assist the Tennessee Regulatory Authority ("TRA") in its consideration of the remaining unresolved issues raised in this arbitration proceeding initiated by Sprint Communications Company, L.P. ("Sprint"). As noted in the Order Granting Joint Motion to Cancel Hearing and Accept Testimony on Certain Issues dated September 14, 2001, there remain only two issues for the TRA to resolve. Those issues, together with BellSouth's position on them, are set forth below.

Issue 4: Pursuant to Federal Communications Commission ("FCC") Rule 51.315(b), should BellSouth be required to provide Sprint at TELRIC rates combinations of UNEs that BellSouth typically combines for its own retail customers, whether or not the specific UNEs have already been combined for the specific end-user customer in question at the time Sprint places its order?

Issue 6: Should BellSouth be required to universally provide access to EELs that it ordinarily and typically combines in its network at UNE rates?

DISCUSSION

As both of these issues revolve around the interpretation of the term "currently combines," as found in FCC Rule 51.319(b), BellSouth will address both of these issues together. Given the long appellate and FCC history surrounding this issue, BellSouth provides below a chronology of the law.

Section 251(c)(3) of the 1996 Act requires incumbent LECs such as BellSouth to "provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." From the plain wording of the 1996 Act, there is no doubt that the CLECs are required to combine the network elements. The FCC, however, interpreted the 1996 Act to require the incumbent LECs to combine the UNEs, upon the request of a CLEC, even if the UNEs were not ordinarily combined in the incumbent LEC's network. The FCC's interpretation was codified in FCC Rules 51.315(c)-(f).

The FCC's decision was appealed to the United States Court of Appeals for the Eighth Circuit, which ruled that "[w]hile the Act requires incumbent LECs to provide elements in a manner that enables the competing carriers to combine them, unlike the Commission, we do not believe that this language can be read to levy a duty on the incumbent LECs to do the actual combining of elements." *Iowa Utils. Bd. v. F.C.C.*, 120 F.3d 753, 813 (8th Cir, 1997) ("*Iowa Utilities I*"). Consequently, the Eighth Circuit vacated, among other things, subsections (c) through (f) of FCC Rule 51.315.

Not surprisingly, the *Iowa Utilities I* decision was appealed to the United States Supreme Court in *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). While the Supreme Court reversed and remanded the Eighth Circuit's vacatur of FCC Rule 51.315(b), the Supreme Court did not address the Eighth Circuit's vacatur of FCC Rules 51.315 (c)-(f). Thus, on remand, the Eighth Circuit reaffirmed its previous ruling vacating FCC Rules 51.315(c)-(f). See, *Iowa Utils. Bd. v. F.C.C.*, 219 F.3d 744 (8th Cir, 2000) ("*Iowa Utilities II*"). The Eighth Circuit noted that requiring incumbents to combine network elements for competitors "cannot be squared with the terms of subsection 251(c)(3)." *Id.* at 759. The Eighth Circuit's decision in *Iowa Utilities II* sets forth the current state of the law: incumbent LECs cannot be required to combine network elements for CLECs.

Sprint now relies on FCC Rule 51.315(b) as support for its position that BellSouth should be required to combine network elements for Sprint. The FCC, however, in its Third Report and Order in CC Docket 96-98 ("*UNE Remand Order*") confirmed that BellSouth presently has no obligation to combine network elements for CLECs, when those elements are not currently combined in BellSouth's network. The FCC found that "to the extent an unbundled loop is *in fact connected* to unbundled dedicated transport the statute and our rule 315(b) require the incumbent to provide such elements to requesting carriers in combined form." *UNE Remand Order*, ¶ 480 (Emphasis Added). The FCC also confirmed that "except upon request, an incumbent LEC shall not separate requested network elements that the incumbent LEC currently combines." 47 C.F.R. § 51.315(b).

Thus, the current state of the law is that BellSouth does not have to provide combinations of UNEs unless those UNEs are, in fact, already combined in BellSouth's network.

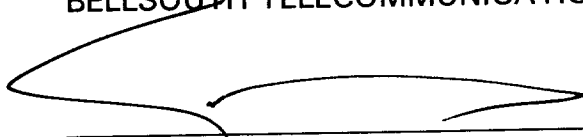
Sprint has also raised the issue of the Enhanced Extended Loop ("EEL") in this proceeding. As with UNE combinations, this issue revolves around the question of whether BellSouth is obligated to combine network elements for Sprint that are not, in fact, already combined in BellSouth's network. The FCC addressed the issue of the EEL in its *UNE Remand Order*, specifically declining to define the EEL as a separate network element and requiring the ILEC to provide the EEL only where the loop is, in fact, connected to the transport. (¶ 478) Therefore, to the extent Sprint seeks to have BellSouth provide the EEL in locations where the EEL is not, in fact, already combined, Sprint is asking BellSouth to combine network elements. For the reasons discussed above, BellSouth should not be required to provide the EEL where the EEL does not already exist.

CONCLUSION

The Authority should adopt BellSouth's positions on each of the issues in dispute. BellSouth's positions on these issues are reasonable and consistent with the 1996 Act, which cannot be said about the positions advocated by Sprint. For the foregoing reasons, BellSouth requests that the Authority rule in BellSouth's favor on each of the remaining arbitration issues.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in dark ink, appearing to read "Guy M. Hicks", is written over a horizontal line.

Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

R. DOUGLAS LACKEY
E. EARL EDENFIELD JR.
675 West Peachtree Street, Suite 4300
Atlanta, Georgia 30375

CERTIFICATE OF SERVICE

I hereby certify that on October 9, 2001, a copy of the foregoing document was served on the parties of record, via hand delivery or U.S. Mail, postage-prepaid, addressed as follows:

- ☐ Hand
- ☐ Mail
- ☒ Facsimile
- ☐ Overnight

James Wright, Esq.
Sprint Communications
14111 Capitol Blvd.
Wake Forest, NC 27587

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

William R. Atkinson, Esq.
Benjamin A. Fincher, Esq.
Sprint Communications
3100 Cumberland Circle
Atlanta, GA 30339

A handwritten signature in black ink, featuring a large, stylized 'S' or 'W' shape with a horizontal line extending to the right.